



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2018-0825; FRL-9991-93-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Delaware; Emissions Statements Rule Certification for the 2008 Ozone National Ambient  
Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision formally submitted by the State of Delaware. Under section 182 of the Clean Air Act (CAA), states' SIPs must require stationary sources in ozone nonattainment areas to report annual emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC). This SIP revision provides Delaware's certification that its existing emissions statements program satisfies the emissions statements requirements of the CAA for the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve Delaware's emissions statements program certification for the 2008 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0825 at <http://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments

submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Sara Calcinore, Office of Air Program Planning (3AP30), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215)814-2043. Ms. Calcinore can also be reached via electronic mail at [calcinore.sara@epa.gov](mailto:calcinore.sara@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone

NAAQS, in 1979. *See* 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every 5 years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is referred to as the 2008 ozone NAAQS. *See* 73 FR 16436 (March 27, 2008).

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, New Castle County and Sussex County in Delaware were designated as marginal nonattainment for the 2008 ozone NAAQS. New Castle County was designated as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2008 ozone NAAQS nonattainment area, which includes the following counties: New Castle in Delaware; Cecil in Maryland; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia in Pennsylvania. *See* 40 CFR 81.308, 81.321, 81.331, and 81.339. Sussex County was designated marginal nonattainment as the Seaford 2008 ozone NAAQS nonattainment area, which includes only Sussex County. *See* 40 CFR 81.308.

Section 182 of the CAA identifies plan submission requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) requires that states develop and submit, as a revision to their SIP, rules which establish annual reporting requirements for certain stationary sources. Sources that are within ozone nonattainment areas must annually report the actual emissions of NO<sub>x</sub> and

VOC to the state. However, states may waive this reporting requirement for classes or categories of stationary sources that emit under 25 tons per year (tpy) of NO<sub>x</sub> and/or VOC if the state provides an inventory of emissions from these classes or categories of sources as required by CAA sections 172 and 182. *See* CAA section 182(a)(3)(B)(ii).

The EPA published guidance on source emissions statements in a July 1992 memorandum titled, “Guidance on the Implementation of an Emission Statement Program, and in a March 14, 2006 memorandum titled, “Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation” (2006 memorandum). In addition, on March 6, 2015, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including the emissions statements requirement of CAA section 182(a)(3)(B) (Implementation of the 2008 Ozone NAAQS Final Rule). 80 FR 12264, codified at 40 CFR Part 51, subpart AA. The 2006 memorandum clarified that the source emission statements requirement of CAA section 182(a)(3)(B) was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as marginal or above under subpart 2, part D, title I of the CAA. Under EPA’s Implementation of the 2008 Ozone NAAQS Final Rule, the source emissions statements requirement also applies to all areas designated nonattainment for the 2008 ozone NAAQS. *See* 80 FR 12264, 12291.

According to the preamble to EPA’s Implementation of the 2008 Ozone NAAQS Final Rule, most areas that are required to have an emissions statements program for the 2008 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. 80 FR 12264, 12291. The preamble to EPA’s Implementation of the 2008 Ozone NAAQS Final Rule states, “If an area has a previously approved emissions statement rule in

force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS.” Id. In cases where an existing emissions statements rule is still adequate to meet the emissions statements requirement under the 2008 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval into the SIP to meet the requirements of CAA section 182(a)(3)(B). Id. In this statement, states should identify how the emissions statement requirements of CAA section 182(a)(3)(B) are met by their existing emissions statements rule. Id.

In summary, Delaware is required to submit, as a formal revision to its SIP, a statement certifying that Delaware’s existing emissions statements program satisfies the requirements of CAA section 182(a)(3)(B) and covers Delaware’s portions of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2008 ozone NAAQS nonattainment area (i.e. New Castle County) and the Seaford 2008 ozone NAAQS nonattainment area (i.e. Sussex County).

## **II. Summary of SIP Revision and EPA Analysis**

On June 29, 2018, the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control (DNREC), submitted, as a formal revision to its SIP, a statement certifying that Delaware’s existing SIP-approved emissions statements program satisfies the emissions statements requirements for the 2008 ozone NAAQS. The provisions that implement Delaware’s emissions statements program are under 7 DE Administrative Code 1117 Section 7.0 Emission Statement and were approved by EPA into the Delaware SIP on April 29,

1996 (61 FR 7415). *See* 40 CFR 52.420(c). Table 1 summarizes Delaware's emissions statements provisions and the corresponding CAA section 182(a)(3)(B) requirements.

**Table 1. Delaware Emissions Statements Provisions and CAA Section 182(a)(3)(B) Requirements**

<b>CAA Section 182(a)(3)(B) Requirement</b>	<b>7 DE Administrative Code 1117 Section 7.0 Requirement</b>
182(a)(3)(B)(i) – For marginal nonattainment areas, the State shall submit a SIP revision to require that the owner or operator of each stationary source of NO <sub>x</sub> or VOC provide the State with a statement for classes or categories of sources showing the actual emissions of NO <sub>x</sub> and VOC from that source.	7 DE Admin Code 1117 Section 7.1 – Emissions statements requirements apply to all stationary sources located in an ozone nonattainment area that emit NO <sub>x</sub> or VOC.  7 DE Admin Code 1117 Section 7.2 – Emissions statements are required to include the following information: source identification information, operating data, actual emissions data, control equipment information, and process rate information.
182(a)(3)(B)(i) – Emissions statements are required to be submitted annually.	7 DE Admin Code 1117 Section 7.3 – Annual emissions statements are due April 30 for the preceding calendar year. DNREC may require more frequent emissions statements if required by EPA or if more frequent analysis of data is necessary to implement the requirements of Title 7, Chapter 60. Environmental Control of the Delaware Code (7 Del.C. Chapter 60).
182(a)(3)(B)(i) – Emissions statements shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.	7 DE Admin Code 1117 Section 7.2 – Each emissions statement shall include a certification of the data to ensure that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement, who shall be an official of the facility and will take legal responsibility for the emissions statement's accuracy.
182(a)(3)(B)(ii) – The State may waive the requirements for emissions statements for any class or category of stationary sources which emit less than 25 tpy of NO <sub>x</sub> or VOC if the State provides an inventory of emissions from such class or category of sources as required by CAA section 172 and 182.	7 DE Admin Code 1117 Section 7.1 – DNREC may, with EPA approval, waive the emissions statements requirements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO <sub>x</sub> or VOCs if the class or category is included in the base year and periodic ozone SIP emission inventories.

EPA's review of Delaware's submittal finds Delaware's existing, SIP-approved emissions statements provisions under 7 DE Administrative Code 1117 Section 7.0 satisfy the emissions statements requirements of CAA section 182(a)(3)(B) for stationary sources located in marginal or above nonattainment areas in Delaware, including such sources in New Castle County and Sussex County, for the 2008 ozone NAAQS.<sup>1</sup> Pursuant to CAA section 182(a)(3)(B)(i), Delaware must require annual emissions statements from stationary sources of NO<sub>x</sub> or VOC located in marginal nonattainment areas. These emissions statements must be certified by an official of the facility. As shown in Table 1, 7 DE Administrative Code 1117 Section 7.1 requires that all stationary sources of NO<sub>x</sub> and VOC located in an ozone nonattainment area submit emissions statements to DNREC, except for those with actual emissions of less than 25 tpy of NO<sub>x</sub> or VOC as permitted by CAA section 182(a)(3)(B)(ii). EPA finds Section 7.1 satisfies the requirements of CAA section 182(a)(3)(B)(i) as it requires that stationary sources located in ozone nonattainment areas in the State, including Delaware's marginal nonattainment areas for the 2008 ozone NAAQS, submit emissions statements. In addition, 7 DE Administrative Code 1117 Section 7.2 requires emissions statements be certified by an official of the facility and Section 7.3 requires emissions statements be submitted annually on April 30. EPA finds these provisions satisfy the requirements of CAA section 182(a)(3)(B)(i) for the 2008 ozone NAAQS as they require emissions statements be certified and submitted annually.

EPA also finds Delaware's emissions thresholds for stationary sources that are required to submit an emissions statement meet the threshold requirements of CAA section 182(a)(3)(B)(ii). As discussed previously, pursuant to CAA section 182(a)(3)(B)(ii), states may waive emissions

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<sup>1</sup> As stated previously, New Castle County and Sussex County in Delaware are both designated as marginal nonattainment for the 2008 ozone NAAQS.

statements requirements for classes or categories of stationary sources that emit less than 25 tpy of NO<sub>x</sub> or VOC if the state provides an inventory of emissions from such classes or categories of sources as required by CAA section 172 and 182. As shown in Table 1, 7 DE Administrative Code 1117 Section 7.1 waives, with EPA approval, the requirement for emissions statements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO<sub>x</sub> or VOC if the class or category is included in the base year and periodic ozone emission inventories. Delaware does provide emissions inventories that include stationary sources in nonattainment areas that emit less than 25 tpy of NO<sub>x</sub> or VOC, as required by CAA sections 172(c)(3) and 182(b)(3)(B)(ii).<sup>2</sup> Therefore, EPA finds the emissions thresholds of 7 DE Administrative Code 1117 Section 7.1 are consistent with CAA section 182(a)(3)(B)(ii).

EPA has determined that the SIP-approved provisions under 7 DE Administrative Code 1117 Section 7.0 satisfy the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. Therefore, EPA is proposing to approve, as a SIP revision, the State of Delaware's June 29, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B).

### **III. Proposed Action**

EPA is proposing to approve, as a SIP revision, the State of Delaware's June 29, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B). Delaware's emissions statements certification certifies that Delaware's existing SIP-approved emissions statements program under 7 DE Administrative Code 1117 Section 7.0

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<sup>2</sup> See, e.g. "Approval and Promulgation of Air Quality Implementation Plans; Delaware; 2011 Base Year Inventories for the 2008 8-Hour Ozone National Ambient Air Quality Standard for New Castle and Sussex Counties," 80 FR 59052 (October 1, 2015).



satisfies the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, proposing approval of Delaware's emissions statements certification for the 2008 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: March 29, 2019.

Cecil Rodrigues,  
Acting Regional Administrator,  
Region III.

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